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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER AVELLINO, JOSEPH E	
			ART UNIT 2143	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/608,230

Applicant(s)

SAR-SHALOM, YARON

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-52 are presented for examination; claims 1, 22, 32, 46 and 51 independent.

Claim Rejections - 35 USC § 101

2. The Office has considered the amendments to the claims. The rejection under 35 USC 101 is hereby withdrawn.

Claim Rejections - 35 USC § 112

3. The Office has considered the amendments to the claims. The rejection under 35 USC 112, second paragraph is hereby withdrawn.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-6, 19, 21-28, 30-42, 44, and 46-52 are rejected under 35 U.S.C. 102(e) as being unpatentable over Dhara et al. (US 2004/0005042) (hereinafter Dhara).

4. Referring to claim 1, Dhara discloses an automatic messaging client launcher for a communication device (i.e. called party) for automatically launching a messaging

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client (i.e. send an instant message) of an originating device (i.e. calling party cellular telephony device 106), said launcher comprising:

an availability detector (i.e. calling party dialog instance 130, 132), for detecting availability of said destination device (i.e. gets status of the telephony device) (Figure 2; ¶ 32); and

a messaging initiator associated with said availability detector for launching said messaging client (the Office construes the phrase "launching the messaging client" as sending a message to the client to display a pop-up window on the client device), when said destination is unavailable (i.e. called party dialog 132 may send an instant message to calling party device 102 to indicate the called party's busy status) (Figure 2; ¶ 23).

5. Referring to claim 2, Dhara discloses the communication device comprises a telephony device (¶ 23).

6. Referring to claim 3, Dhara discloses providing destination device addressing information to said messaging client (i.e. the "instructions" are forwarded to the calling party telephony device, which then transmits the instructions 210 to the calling party dialog, and then to the called party dialog 222, therefore there inherently must be some destination information provided to the calling party in order to correctly forward the instructions back to the called party dialog) (Figure 2).

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7. Referring to claim 4, Dhara discloses launching the messaging client by inputting a message to said messaging client (i.e. transmitting an instant message to the telephony device to solicit instructions) (Figure 2; ¶ 23).

8. Referring to claim 5, Dhara discloses that the reply to said message is addressed to said destination device (i.e. a request for information is transmitted from said called party to the calling party to solicit information, which is then replied and eventually forwarded back to the called party device) (Figure 3, ref. 326, 328).

9. Referring to claim 6, Dhara discloses providing destination device addressing information in a reply field of said message (i.e. set up two-way communications path to the calling party to establish communications path to accept call) (Figure 3; ref. 330; ¶ 39-40).

10. Referring to claim 19, Dhara discloses the system detects unavailability by reading a busy signal from the destination device (Figure 2, ref. 212).

11. Referring to claim 21, Dhara discloses the system will send a message which appears to be sent from said destination device (i.e. in order to solicit information for the disposition of the call, the called party dialog will ask questions such as “what is the nature of the call”, “what is the calling party’s name”, etc. In this sense it appears that it

is the destination device which asks these questions, or a representative thereof)
(Figure 2).

12. Claims 22-28, 30-42, 44, and 46-52 are rejected for similar reasons as stated above.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dhara.

14. Referring to claim 7, Dhara disclose the invention substantively as described in claim 3, however does not specifically disclose the messaging client comprises an integrated component of said launcher, however it has been held obvious to make things integral. See *In re Larson* 144 USPQ 347 (CCPA 1965). By this rationale, one of ordinary skill in the art would find it obvious to combine a component of the launcher with the messaging client, thereby provided an integrated program which improves communications and reliability.

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15. Referring to claim 8, Dhara discloses that the messaging client is operable to send a message to said destination device (Figure 3, ref. 324, "transmit information" is sent from the calling party to the called party).

16. Referring to claim 9, Dhara discloses the messaging client is operable to send said message upon a user command (i.e. the calling party transmits the information regarding the disposition of the call) (Figure 3; ¶ 36-39).

17. Referring to claim 10, it is inherent that the destination device is provided in a destination field, since the destination device is the recipient of the "information" provided by the calling party (¶ 36-39).

18. Referring to claim 11, Dhara discloses the messaging client is operable to display a message content input screen on said originating communication device (i.e. the request for information or request for instruction messages are displayed on the calling device) (Figures 2-3).

19. Referring to claim 12, Dhara discloses the type of message can include voice message (i.e. text to speech) (¶ 37).

20. Referring to claim 13, Dhara discloses the message includes text (i.e. it is inherent that the instant message includes text) (¶ 26).

21. Referring to claim 14, Dhara discloses the content includes default message content (i.e. if the called party is busy then a default script based on the user selected script is shown as to how to dispose of the call) (Figure 2, ref. 218; ¶ 33-34).

22. Referring to claim 15, Dhara discloses sending the default message automatically (i.e. if the called party is "busy" then the instructions are sent, without any user intervention) (Figure 2).

23. Referring to claim 16, Dhara discloses the invention substantively as described in claim 14. Dhara does not specifically disclose the default message is specified by the originating communication device, however the calling party does have the ability to determine the instruction on how to finish the call (i.e. leave a voicemail, instant message, email, etc.), thereby allowing the calling party some flexibility in how to use the system. Furthermore, user-selected messages are well known in the art (i.e. user configured systems). By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for having the user select the default message is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Dhara in order to allow the user to select the default message in order to customize the system to the users liking, and further can allow the use of multiple languages without the trouble of learning those languages (i.e. if an

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English user wished to reach a Spanish user, yet the user would be unable to understand the "instructions" if they were in Spanish.

24. Referring to claim 17, Dhara discloses the client launcher is activated and deactivated by said originating communication device (i.e. the launcher only works when the calling party actually calls a destination device, therefore the system is event-driven and will only work based on the originating device's wishes) (Figure 2).

25. Referring to claims 18 and 20, Dhara discloses the invention substantively as described in claim 1, however do not specifically disclose that the system is able to detect unavailability based on a number of rings or being sent to voicemail, however these are standard triggering signals which could be easily used instead of the "busy" status signal as is used in Dhara. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for using a set number of rings or being sent to voicemail to detect unavailability is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system to utilize a set number of rings or sent to voicemail to detect unavailability in order to customize the system to the user's liking, thereby providing a customized and tailored system to the user.

26. Claims 29, 43, and 45 are rejected for similar reasons as stated above.

Response to Arguments

27. Applicant's arguments filed May 23, 2007 have been fully considered but they are not persuasive.

28. In the remarks, Applicant argues, in substance, that (1) Dhara does not disclose an automatic messaging client launcher where the messaging client is launched from an originating device, rather Dhara discloses the ability of a called party, or the destination device, to initiate contact and communicate with a calling party, (2) Dhara does not disclose the claimed messaging initiator since Dhara fails to provide an input screen for user input of message content, rather sends an instant message to indicate the called party is busy, and (3) Dhara does not disclose the messaging operator is operable to provide destination device addressing information to said messaging client, rather discloses providing the current status of the called party's telephony device.

29. As to point (1), Applicant is attempting to import limitations into the claim. Applicant must understand that the called party dialog instance 132 of Dhara does not initiate (or launch) the messaging client. As shown in Figure 2, the called party dialog instance 132 sends a "busy" message to the called party dialog instance 212, which, after setting up a communications path, sends a request for instructions 218. Applicant's attention is directed to ¶ 33 of Dhara wherein the calling party dialog instance sets up a communication path in order to obtain information regarding disposition of the call. *The calling party transmits the information from his or her*

telephony device 220 (¶ 34). Although the request for instruction is sent to the calling party, it is understood that the client device must be able to create the window in order to query the user for disposition of the call. This clearly demonstrates that the destination device does not initiate contact and communicate with a calling party, rather an intermediary (made up of the calling party dialog and the called party dialog) detects the availability of the destination device, and when the destination device is unavailable, launches a messaging client for disposition of the call. By this rationale, the rejection is maintained.

30. As to point (2), Applicant's attention is directed to Figure 2 and ¶ 33-35 which discloses sending a request for instructions (Figure 2, ref. 218) and that the request may be in audible form, *or may be in SMS form, email, etc.* (¶ 33). This clearly indicates the use of an input screen for the calling party user to indicate the instructions to the calling party dialog. By this rationale, the rejection is maintained.

31. As to point (3), Applicant is incorrect. The instructions would inherently include some sort of destination information, otherwise the device would be unable to route the instructions back to the destination device. Whether it be through the dialog instances, through a network, etc. the term "destination device addressing information" clearly indicates that the messaging client would be able to send the message to the destination device, and since this occurs through the use of the dialog instances, this

clearly indicates that destination device addressing information has been provided to the messaging client. By this rationale, the rejection is maintained.

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

33. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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A handwritten signature in black ink, appearing to read 'J. Avellino', with a stylized flourish at the end.

Joseph E. Avellino, Examiner
May 28, 2007